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Report of the Secretary-General on the request of Nepal for United Nations assistance in support of its peace process

I. Introduction

1. The present report is submitted pursuant to Security Council resolution 1939 (2010), by which the Council, following the request of the Government of Nepal and the recommendation of the Secretary-General, extended the current mandate of the United Nations Mission in Nepal (UNMIN) for the last time, until 15 January 2011. UNMIN was established as a special political mission in 2007 with a mandate that includes the monitoring of the management of arms and armed personnel of the Nepal Army and the Communist Party of Nepal-Maoist (CPN-M), which is now the Unified Communist Party of Nepal-Maoist (UCPN-M). The present report reviews the progress of the peace process and the implementation of the mandate of UNMIN since my last report to the Security Council, of 2 September 2010 (S/2010/453).

II. Progress of the peace process

2. Despite continued efforts, the parties have achieved only limited progress in advancing the peace process during the reporting period. Intensified, though sporadic, discussions have taken place, but the parties have yet to take a number of political decisions that would generate momentum in the main tasks of the peace process, namely, the future of the two armies and the promulgation of the Constitution. Some procedural decisions were reached relating to the establishment and functioning of the secretariat of the Special Committee to supervise, integrate and rehabilitate Maoist army personnel, and a high-level task force was established to address contentious issues in the drafting of the constitution.

3. Most substantive progress has been stymied by the continued mistrust among the main political parties and the resulting impasse. At the centre of this is the unresolved issue of forming a new government following the resignation of Prime Minister Madhav Kumar Nepal on 30 June 2010. Sixteen rounds of voting in the Legislature-Parliament have failed to produce a new prime minister. Options for power-sharing have been discussed by the parties, so far inconclusively. Although the broad parameters of a potential understanding on the main outstanding issues can be discerned, the sequencing of implementation remains to be agreed upon.

4. The parties maintain that they seek consensus towards breaking the deadlock, but the movement away from their fixed positions has been difficult to achieve in

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practice. The Nepali Congress has maintained its candidate for the premiership, Ram Chandra Poudel, despite 16 rounds of unsuccessful voting in the Constituent Assembly, of which he has been the sole contender in 9. UML has maintained its neutral stance in voting, and UCPN-M has voiced its opposition to Poudel's candidacy, making it unlikely that he will secure the necessary majority in the absence of a political settlement.

5. An agreement by UCPN-M not to block submission by the Government of a basic budget broke down on 19 November when the Government presented a full budget and UCPN-M responded by physically manhandling the Minister of Finance in the Legislature-Parliament. The Legislature-Parliament was subsequently prorogued by the President on the recommendation of the caretaker Prime Minister, and the budget was passed by ordinance. The opposition questioned the authority of a caretaker government to involve the President in this matter. The suspension of the Legislature-Parliament has also raised questions about the future voting for the premiership and the implementation of the budget. On 12 December, UCPN-M, along with some smaller parties, formally requested the President to summon the House. In public pronouncements, the caretaker Prime Minister has indicated that the House would be reconvened only after the political deadlock is resolved.

6. In late September, at the first General Convention of the Nepali Congress since 2005, Sushil Koirala was elected party president, succeeding the late Girija Prasad Koirala, following a close contest with former Prime Minister Sher Bahadur Deuba. The UCPN-M Central Committee plenum concluded on 26 November with the leadership presenting a united front, but reportedly without having settled significant internal differences. The final document set the peace and constitution-drafting processes as the party's priority, while also speaking of preparations for a "people's revolt" should this process fail. Significant numbers of Maoist army personnel took part in the plenum despite UNMIN having termed this contrary to the spirit of the peace agreements.

7. UNMIN sought, but has yet to receive, clarification from the parties on the scope of the unwritten "gentlemen's agreement", which reportedly addresses the issue of the Nepal Army's confinement and the implementation of its national responsibilities. The agreement thus carries implications for the monitoring of arms and armies by UNMIN.

8. UNMIN has continued its efforts to ensure the Mission's orderly withdrawal on 15 January 2011 intensifying engagement with the relevant parties over the integration and rehabilitation of Maoist army personnel and on alternative monitoring arrangements. The Mission has continued to urge the parties to address the future of the Agreement on the Monitoring of the Management of Arms and Armies and the Joint Monitoring Coordination Committee.

9. In line with the request of the Security Council, the Under-Secretary-General for Political Affairs, B. Lynn Pascoe, visited Nepal in October and again in December to assess progress in the peace process. Meeting with a range of interlocutors, he called on the parties urgently to reach the necessary political agreements to resolve outstanding issues, primarily the integration and rehabilitation of Maoist army personnel, ahead of the departure of UNMIN.

A. Drafting of the constitution

10. The high-level task force headed by UCPN-M Chairman Pushpa Kamal Dahal has reached agreement on more than half of the 210 unresolved issues related to the new constitution, most notably on the federal structure at the provincial level, the use of official languages at the federal and provincial levels, citizenship and the judiciary. Some issues of fundamental importance, such as forms of government and the federal structure, remain unresolved. The parties have decided not to extend the mandate of the task force, which expired on 11 December.

11. The Constitutional Committee was unable to meet the 17 November deadline for preparing a first draft of the constitution, contributing to concerns about meeting the 28 May 2011 deadline for its promulgation.

B. Integration and rehabilitation of Maoist army personnel

12. The Special Committee to supervise, integrate and rehabilitate Maoist army personnel formed a secretariat comprising the former members of the Technical Committee, along with one representative from each of the security forces and from the Maoist army. The Committee subsequently appointed a secretariat coordinator. No decisions have been reached on the number, entry norms or modalities for Maoist army personnel to be integrated into the security forces, or on support packages for those choosing a rehabilitation option.

13. At the request of the Special Committee, UNMIN provided data on verified Maoist army personnel to the Ministry of Peace and Reconstruction. The secretariat proposes to collect additional data and preferences for integration, rehabilitation, or "voluntary exit" with a cash package, through a survey of personnel in the cantonments.

14. During the visit of the Under-Secretary-General for Political Affairs in early December, the secretariat coordinator presented the outline of a six-week plan to recruit and deploy liaison teams for all the cantonments, as well as to take over monitoring responsibilities from UNMIN. The plan has not been developed in detail, and has yet to be endorsed by UCPN-M. The Special Committee has also stated that it could bring the Maoist army under its supervision within two weeks after the necessary political decisions have been taken and regroup personnel according to their preferences for integration, rehabilitation or voluntary discharge within a further 45 to 60 days.

C. Other challenges facing the peace process

15. The security situation in the Tarai remains fragile, with continued reports of killings and abductions by criminal and armed groups. Such incidents have mostly targeted members of the business community and sometimes young children, primarily for ransom. In one particularly violent incident in early October, two schoolboys were abducted and killed near Nepalgunj, leading to spontaneous protests and sporadic clashes. Altercations between youth organizations affiliated to political parties have led to serious injuries and a number of deaths.

16. A renewed emphasis on identity-based politics could raise tensions in the lead-up to the promulgation of the new constitution. Madhesh-based parties have long voiced frustration at their exclusion from the dialogue on formation of the government. More recently they have resisted attempts by the Election Commission to update voter lists by using citizenship cards. They claim that this basis for registration would exclude more than 3 million Madheshi Nepali citizens. Other small parties have expressed concern that using other forms of identification to register voters will endanger national security by inadvertently granting the vote to non-Nepalis. On 2 November, the Election Commission made amendments to its registration guidelines, allowing certain documents other than the citizenship card to be used for registration. On 25 November, the Supreme Court issued an interim stay order, however, directing the Election Commission to stop registering voters with documentation other than the citizenship card.

III. Activities of the United Nations Mission in Nepal

A. Arms monitoring

17. The Arms Monitoring Office continued to monitor the compliance of the Nepal Army and the Maoist army with the Agreement on the Monitoring of the Management of Arms and Armies, maintaining round-the-clock surveillance of the Nepal Army weapons storage site and the weapons storage areas at the seven main cantonment sites of the Maoist army. Arms monitors also visited the satellite cantonment sites on a regular basis and conducted other operations using mobile teams.

18. During the reporting period, the Joint Monitoring Coordination Committee met five times and considered 15 alleged violations. Three cases have been resolved, one was dismissed, and 11 remain under investigation.

B. Child protection

19. UNMIN continued to provide advisory support to the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF) and the United Nations Development Programme (UNDP) in the implementation of rehabilitation programmes for former Maoist army personnel disqualified as minors, as well as to the United Nations mechanism monitoring compliance by UCPN-M with the discharge action plan. The Mission took the lead in organizing the visit to Nepal of the Security Council Working Group on Children and Armed Conflict from 21 and 26 November, which was the first ever field visit of the Group. Its members assessed the progress and challenges in the protection of children affected by the conflict, with particular attention to the action plan signed in December 2009 for the discharge of disqualified Maoist personnel.

C. Political affairs

20. The Political Affairs Office continued to monitor, analyse and report on the implications of the overall political situation, including the dynamics among the political parties, the role of traditionally marginalized groups and the proceedings of

the Constituent Assembly, and to assist Mission leadership in supporting the peace process.

D. Public information

21. The Public Information and Translation Unit continued to monitor and engage with the media, disseminating products related to the work of the Mission and setting the record straight on a range of issues.

E. Safety and security

22. The security situation remained relatively calm throughout the country, notwithstanding incidents of extortion and the explosion of improvised explosive devices carried out mostly by armed groups in the Tarai. There were no direct threats made against United Nations staff or property during the reporting period.

F. Mission support

23. The mission support component continued to support UNMIN activities throughout the Mission area, and also prepared for the Mission's withdrawal in accordance with the approved liquidation plan. These activities are currently focused on asset disposal and preplanning for the withdrawal of arms monitors from cantonment sites. UNMIN also briefed embassies based in Kathmandu, non-governmental organizations and United Nations agencies on staff skills and arranged a visit from the Department of Field Support to address issues of staff placement. As at 29 November 2010, 254 of the authorized 278 personnel were serving in the Mission. Out of 182 civilian personnel, 29.12 per cent are women.

IV. Human rights

24. No substantial progress was achieved in addressing impunity and ensuring accountability for human rights violations committed during or after the conflict. In September, UCPN-M suspended from its Central Committee a Maoist army commander against whom arrest warrants had been issued for his alleged involvement in the 2008 murder of businessman Ram Hari Shrestha as well as in the illegal trade of a traditional medicinal commodity. The suspension is for a period of three months, and it is unclear whether the commander retains his position within the Maoist army.

25. In contradiction to existing decisions of the Supreme Court and other lower courts, there are calls in some political quarters for the investigation and prosecution of cases of alleged human rights and international humanitarian law violations committed during the conflict to await the formation of the transitional justice mechanisms envisioned in the Comprehensive Peace Agreement. Bills for the establishment of such mechanisms were registered at the Legislature-Parliament in February 2010 but remain pending before the legislative committee, and in their current form do not provide for prosecutorial powers or for a direct handover of cases to the criminal justice system.

26. In September, OHCHR-Nepal released a summary of concerns entitled "Investigating allegations of extrajudicial killings in the Terai". The report documents 39 incidents in the Terai which resulted in the deaths of 57 persons between January 2008 and June 2010, all involving credible allegations of the unlawful use of force by security forces.

27. As part of its agreement with the Government, OHCHR-Nepal will phase out its regional offices by the end of the current year, but will continue to conduct field activities across Nepal.

V. United Nations country team coordination

28. Political uncertainties continued to adversely affect Nepal's development operations. The 2011 budget was issued through an ordinance on 20 November, more than four months late, and has yet to be endorsed by the Legislature-Parliament. Significant delays and uncertainty surrounding its approval have affected revenues, expenditure and investment projections.

29. Throughout the reporting period, UNDP provided ongoing support to the voter registration process which reached approximately 1.3 million voters by the end of 2010 and is expected to reach more than 12 million voters by mid-2011.

30. The United Nations Inter-agency Rehabilitation Project, managed jointly by UNICEF, UNDP, the United Nations Population Fund and the International Labour Organization, continued to support the socio-economic rehabilitation of the 4,008 disqualified personnel verified as minors and late recruits who were discharged from the Maoist army in February 2010. Of those disqualified, over 1,800 have received counselling on their rehabilitation options, over 420 have completed their training, and over 100 graduates of the programme have achieved gainful wage or self-employment. The percentage of women in each category is 33, 27 and 40, respectively.

31. The United Nations mine action team continued to support the Government in the areas of coordination, clearance, risk education, victim assistance and advocacy. Currently, 33 of all 53 minefields have been cleared by the Nepal Army demining teams with technical support from the United Nations mine action team, and clearance of the remaining 20 minefields commenced in October 2010.

32. Led by the United Nations Resident Coordinator, and in consultation with the Government and local partners, Nepal's development partners and the United Nations country team formulated a peace and development strategy during the course of 2010. Set to be launched in January 2011, the strategy provides a framework for development partner support to the implementation of Nepal's Comprehensive Peace Agreement, seeks to improve impact and avoid the duplication, gaps and missed opportunities commonly seen as risks to peacebuilding efforts in transition situations.

33. While highlighting the renewed focus on longer-term development, the political deadlock leaves remaining needs and acute vulnerabilities unaddressed. According to the World Food Programme, in 2010 the number of food insecure people living in rural areas fluctuated between 3.2 and 3.5 million people — representing approximately 16 per cent of the rural population, of whom 1.6 million receive United Nations assistance. In addition, each year monsoon floods and

landslides affect hundreds and at times tens of thousands of people. While the Government has increased its capacity over the years, collaboration on building preparedness and response capacity has slowed. Increased sustainable medium to long-term measures are needed to reduce vulnerability and resolve the need for humanitarian assistance.

VI. Observations

34. Nepal's peace process is at a crossroads. The journey that began a little over five years ago with the signing of the Twelve-point Understanding in November 2005 was solidified in the Comprehensive Peace Agreement a year later as well as through subsequent agreements and constitutional, legislative and political measures, has opened up the possibilities of substantial political and social reform. The United Nations is proud to have contributed its share to this nationally owned process in various ways. Not only did the United Nations deploy the Mission in record time following the signing of the Comprehensive Peace Agreement, but it also assisted the parties to negotiate the arms monitoring agreement that has served as the basis for monitoring of the two armies and their arms as well as provided a mechanism for dispute resolution and confidence-building. The United Nations also provided considerable assistance to national authorities in conducting the historic Constituent Assembly election. But Nepal's journey towards sustainable peace is not finished, and the prolonged political deadlock that has hampered progress has become a growing concern for Nepalis and the international community alike as key timelines and deadlines approach in the coming months.

35. While the Government and the Maoists agreed in September 2010 that the remaining tasks of the peace process would be largely completed by mid-January 2011, this has so far proved elusive. Although there have been intensified efforts, including high-level talks in the first half of November, structured discussion has been limited. The country has remained under a caretaker government for the past six months with the parties unable to agree on the leadership and formation of a new government. The peace process still faces several challenges, above all that of promulgating a new constitution within the extended deadline of 28 May 2011 and integrating into the security forces or rehabilitating roughly 19,000 Maoist army personnel.

36. A number of other commitments contained in the Comprehensive Peace Agreement and the interim constitution have yet to be addressed and hold the seeds of fresh confrontation if expectations remain unmet. Polarized relations and deepening rifts among and within the political parties and the associated mistrust remain at the heart of the stalemate. This polarization is not insurmountable. The parties can and must find a way out of this situation. They have in the past made major compromises, and they must soon do the same. None of them can afford to put the entire process and the fruits of their hard work at serious risk. No one side can expect to win at the expense of others.

37. Throughout 2010, the parties have demonstrated their ability to forge agreement on some issues, most recently through the high-level task force on the new constitution, and earlier in the year over extension of the Constituent Assembly and the discharge of disqualified Maoist army personnel. There is still time for the parties to fulfil their peace process commitments and improve their political

dynamic. Much depends on their ability and willingness to take fresh measures, make necessary compromises and act on the acknowledged need for consensual approaches. It is vital for all political parties to focus on the long-term interests of the country and people of Nepal rather than on partisan interests. The successful conclusion of the peace process is entirely dependent on the parties' reaffirmation of their collective responsibility and a concrete demonstration of their capacity to compromise in the larger interest of the nation.

38. Rapid steps are needed to secure the integration and rehabilitation of Maoist army personnel in a mutually acceptable manner, which the United Nations would have liked to see prior to the departure of UNMIN in order to avoid any vacuum. There has similarly been no progress on the parallel commitment to determine the right number and democratize the Nepal Army, as the parties recognized, this, too, is vital for Nepal's future stability. My Representative has sought clarity about the status of the Agreement on Monitoring the Management of Arms and Armies and the Joint Monitoring Coordination Committee, respectively the basis of the arms monitoring arrangement and its critical dispute resolution mechanism. At this point, however, the parties do not yet have an agreed plan for follow-on arrangements for the monitoring of arms and armies. In the absence of broader political agreement, this is cause for concern.

39. At the request of the Government of Nepal, the Security Council decided on 15 September 2010 that the present UNMIN mandate would be terminated on 15 January 2011. UNMIN was set up as a short-term mission. Its mandate of supporting the electoral process and the monitoring of the management of arms and armies were foreseen as transitional arrangements. In the absence of an agreement on the future of Maoist army personnel, which must be arrived at through dialogue and compromise, the monitoring mandate has been extended repeatedly, at the request of the parties, for two and a half years after the successful Constituent Assembly election. Beyond its monitoring role, UNMIN has been a positive factor in the difficult context of the process during this period. However, it has had a limited mandate that did not enable it to provide greater support in resolving political difficulties in the peace process as a whole. With the peace process still incomplete and uncertain arrangements for supervision, integration and rehabilitation of Maoist army personnel, the optimal conditions for the departure of UNMIN have not yet been attained. But at the same time, it has become quite clear that it makes little sense to extend continually UNMIN without any meaningful progress by the parties on political issues.

40. The United Nations has consistently emphasized Nepal's sovereignty and ownership of its own peace process. The United Nations will continue its long-standing support to the search for sustainable peace in Nepal, and I will follow closely all developments in Nepal's peace process and remain engaged, keeping the Security Council informed as necessary. I am certain the Council will continue to maintain an interest in the success of the peace process and would be ready to respond to its needs, as required. The United Nations entities in Nepal will assist in the rehabilitation of Maoist army personnel when the time comes, as well as continue to lend support to the constitution-drafting process and the many medium- and longer-term elements of peacebuilding.

41. I am confident that the advances made in Nepal's unique peace process will not easily be reversed, and I urge all the parties to do their utmost to preserve these

gains, to complete the peace process successfully and ensure the country's democratic stability. Such processes are never easy, and Nepal has managed its own peace process with greater goodwill and steadiness than have many other countries in similar post-war settings.

42. I wish to convey my appreciation to the members of the Security Council and other Member States for their long-standing support to Nepal and to the work of the United Nations in support of the peace process, and to thank my Representative, Karin Landgren, her predecessors, her staff and partner organizations in Nepal for their dedicated efforts.